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No. 71-1184

In the Supreme Court of the United States

OCTOBER TERM, 1971

LEONARD WISNIEWSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial with others in the United States District Court for the District of Connecticut, petitioner was convicted of having conspired to use extortionate means to collect an extension of credit, and of two substantive counts charging the making of an extortionate extension of credit and the use of extortionate means to collect an extension of credit, in violation of 18 U.S.C. 892, 894. He was sentenced to concurrent prison terms of five years. The court of appeals affirmed (Pet. App. 1a–11a) and denied a petition for rehearing (Pet. App. 12a).

Petitioner here relies on two contentions first raised in a petition for rehearing below. He argues: (1) that

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his right to confrontation was denied by the procedure, apparently followed without objection and with the express consent of counsel for one of the co-defendants, by which the judge interrogated the jurors *in camera* and on the record regarding the possible prejudicial effect of a newspaper article; and (2) that the introduction, limited to the issue of petitioner's consciousness of guilt, of testimony that petitioner offered to bribe victims of the extortionate conduct who testified for the government violated his privilege against self-incrimination since he was subsequently acquitted of the charges stemming from this alleged incident. Even assuming that the trial judge erred in interrogating the jurors *in camera*, petitioner has demonstrated no prejudice. See Pet. App. 7a–9a; *United States* v. *Gradsky*, 434 F. 2d 880, 884 (C.A. 5), certiorari denied *sub nom. Roberts* v. *United States*, 401 U.S. 925, and cases there cited; *Peterson* v. *United States*, 411 F. 2d 1074, 1080–1081 (C.A. 8), certiorari denied, 396 U.S. 920; *United States* v. *McNair*, 433 F. 2d 1132, 1136 (C.A. D.C.).

As to the testimony, it was plainly relevant to the charges. The fact that the testimony concerned conduct for which petitioner was later acquitted does not require a new trial. To be admissible, evidence regarding other alleged criminal conduct does not have to rise to the level of showing that the defendant engaged in such conduct "beyond a reasonable doubt"—the standard required for conviction. Cf. *United States* v. *Geaney*, 417 F. 2d 1116, 1119–1120 (C.A. 2), certiorari denied *sub nom. Lynch* v. *United States*, 397 U.S. 1028.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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